

STATE PROCUREMENT OFFICE

PROGRAMS EXEMPT FROM CHAPTER 103D, HRS

DEPARTMENTS AND AGENCIES:

GOVERNOR

Civil Defense and Emergency Act

§128-10 Other powers. “(10) ...Chapter 103D,...shall not apply to any civil defense or other emergency functions...”

Labor Disputes; Stevedoring Industry

§382-3 Government operations. “After the issuance of a proclamation pursuant to section 382-2 and during the emergency thereby proclaimed... The governor may make contracts without regard to chapter 103D....”

ACCOUNTING AND GENERAL SERVICES

§1-28.5 Publication of notice. “(a) Notwithstanding any other statute, law, charter provision, ordinance, or rule to the contrary, whenever a government agency is required to give public notice or to publish notice, the notice shall be given only as follows: (d) This section shall not apply to notices required by chapters 103D....”

BUDGET AND FINANCE

§37D-2 Financing agreements. “(5) The department shall not be subject to chapter 103D and any and all other requirements of law for competitive bidding for financing agreements.”

BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM

Hawaii Tourism Authority

§201B-12 Exemption of authority from taxation and Hawaii public procurement code. “(b) The authority shall not be subject to chapter 103D and any and all other requirements of law for competitive bidding for project agreements, construction contracts, lease and sublease agreements, or other contracts unless a project agreement with respect to a project otherwise shall require.”

COMMERCE AND CONSUMER AFFAIRS

Hawaii Hurricane Relief Fund

§431P-16 Establishment of trust funds. “(a)... Disbursements from the trust funds shall not be subject to chapter 103D and shall be made in accordance with procedures adopted by the board.”

EDUCATION

§302A-1184 New century charter schools; exemptions. “New century charter schools shall be exempt from the state procurement code, chapter 103D.”

UNIVERSITY OF HAWAII

Research Corporation of the University of Hawaii

§307-4 Research corporation excepted from certain state laws. “(2) Chapter 103D. ..., relating to advertising for bids and purchases to be made in Hawaii whenever public moneys are expended.”

LEGISLATIVE REFERENCE BUREAU

§23G-17 Printing; contracts. “The office of the legislative reference bureau shall cause sufficient copies of the session laws, supplements, and replacement volumes to be printed. The bureau may contract for the publications with or without regard to the laws governing public contracts or public printing.”

ALL POLITICAL SUBDIVISIONS

Civil Defense and Emergency Act

§128-13 Power and authority of local organizations. “(3)...Chapter 103D, ... shall not apply to any civil defense function...”

Exemptions pursuant to Section 103D-102 (b), Hawaii Revised Statutes:

“(b) Notwithstanding subsection (a), this chapter shall not apply to contracts by governmental bodies:

- (1) Solicited or entered into before July 1, 1994, unless the parties agree to its application to a contract solicited or entered into prior to July 1, 1994;
- (2) To disburse funds, irrespective of their source:
 - (A) For grants or subsidies as those terms are defined in section 42F-101, made by the state in accordance with standards provided by law as required by article VII, section 4, of the State Constitution; or by the counties pursuant to their respective charters or ordinances;
 - (B) To make payments to or on behalf of public officers and employees for salaries, fringe benefits, professional fees, or reimbursements;
 - (C) To satisfy obligations that the State is required to pay by law, including paying fees, permanent settlements, subsidies, or other claims, making refunds, and returning funds held by the State as trustee, custodian, or bailee;
 - (D) For entitlement programs, including public assistance, unemployment, and workers’ compensation programs, established by state or federal law;
 - (E) For dues and fees of organizations of which the State or its officers and employees are members, including the National Association of Governors, the National Association of State and County Governments, and the Multi-State Tax Commission;
 - (F) For deposit, investment, or safekeeping, including expenses related to their deposit, investment, or safekeeping;
 - (G) To governmental bodies of the State;
 - (H) As loans, under loan programs administered by a governmental body;
 - (I) For contracts awarded in accordance with the provisions of chapter 103F; and
 - (J) For grants awarded by the Office of Hawaiian Affairs in accordance with the provisions of chapter 10.
- (3) To procure goods, services, or construction from a governmental body other than the University of Hawaii bookstores, from the federal government, or from another state or its political subdivision;
- (4) To procure the following goods or services which are available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the State:
 - (A) Services of expert witnesses for potential and actual litigation of legal matters involving the State, its agencies, and its officers and employees, including administrative quasi-judicial proceedings;
 - (B) Works of art for museum or public display;
 - (C) Research and reference materials including books, maps, periodicals, and pamphlets, which are published in print, video, audio, magnetic, or electronic form;
 - (D) Meats and foodstuffs for the Kalaupapa settlement;
 - (E) Opponents for athletic contests;
 - (F) Utility services whose rates or prices are fixed by regulatory processes or agencies;
 - (G) Performances, including entertainment, speeches, and cultural and artistic presentations;
 - (H) Goods and services for commercial resale by the State;

- (I) Services of printers, rating agencies, support facilities, fiscal and paying agents, and registrars for the issuance and sale of the State's or counties' bonds;
 - (J) Services of attorneys employed or retained to advise, represent, or provide any other legal service to the State or any of its agencies, on matters arising under laws of another state or foreign country, or in an action brought in another state, federal, or foreign jurisdiction, when substantially all legal services are expected to be performed outside this State;
 - (K) Financing agreements under chapter 37D; and
 - (L) Any other goods or services which the policy board determines by rules or the chief procurement officer determines in writing is available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the State; and
- (5) Which are specific procurements expressly exempt from any or all of the requirements of this chapter by:
- (A) References in state or federal law to provisions of this chapter or a section of this chapter, or references to a particular requirement of this chapter; and
 - (B) Trade agreements, including the Uruguay Round General Agreement on Tariffs and Trade (GATT) which require certain non-construction and non-software development procurements by the comptroller to be conducted in accordance with its terms."

Pursuant to §103D-102 (b)(4)(L), HRS, and §3-120-4, HAR, Exhibit A, in Chapter 3-120, HAR, provides list of additional exemptions which the procurement policy board has also determined to be exempt from chapter 103D, HRS:

<u>Exemption Number</u>	<u>Exemption</u>
1.	Research, reference, and educational materials including books, maps, periodicals, and pamphlets, which are published or available in print, video, audio, magnetic, or electronic form, including web-based databases;
2.	Services of printers, rating agencies, support facility providers, fiscal and paying agents, and registrars for the issuance and sale of the State's or counties' bonds;
3.	Services of lecturers, speakers, trainers, and scriptwriters;
4.	Services of legal counsel, guardian ad litem, psychiatrists, and psychologists, when required by court order, or by the Rules of Court in the case of interpreters, in criminal and civil proceedings;
5.	Fresh meats and produce;
6.	Insurance to include insurance broker services;
7.	Animals and plants;
8.	New or used items which are advantageous and available on short notice through an auction, bankruptcy, foreclosure, etc.;
9.	Food and fodder for animals;
10.	Facility costs for conferences, meetings, and training sessions;
11.	Advertisements in specialized publications, such as in ethnic or foreign language publications, trade publications, professional publications;
12.	Professional consultant services as required under Chapter 658, HRS;
13.	Interpreter services;
14.	Procurement of repair services when dismantling is required to assess the extent of repairs;
15.	Burial services consisting of mortuary, crematory, cemetery, and other essential services for deceased indigent persons or unclaimed corpses; and
16.	Radio and television airtime when selection of station is to be made by current audience demographics.